

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 30-94

CONSTRUCTION AND GENERAL)
LABORERS' LOCAL NO. 3334,)
LIUNA, AFL-CIO)

Complainant,)

-vs-)

BUTTE-SILVER BOW GOVERNMENT)

Defendant.)

RECOMMENDED ORDER
OF
DISMISSAL

* * * * *

I. INTRODUCTION

On December 14, 1993, the Construction and General Laborers' Local No. 1334, affiliated with the Montana Council of Laborers, AFL-CIO of Butte, Montana filed an unfair labor practice charge with this Board alleging that the Butte-Silver Bow Government was violating Section 39-31-401(5), MCA, thereby constituting an Unfair Labor Practice. The Defendant denied any violation of the above-cited law.

1 An investigation was conducted which reviewed the written
2 documentation of all parties involved, telephonic interviews with
3 a representative of the Defendant, and repeated calls to the
4 representatives of the Complainant. The central issue concerning
5 this complaint revolves around the parties understanding of the
6 language agreed to during contract negotiations. Specifically,
7 the disagreement is centered around language that was allegedly
8 tentatively agreed to and which the Complainant asserts was not
9 included in Article 20, Seniority, Sections 1 and 4.

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11 II. DISCUSSION
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13 The Complainant alleges that the language contained within
14 Article 20 Seniority of the current collective bargaining agreement
15 does not reflect the understanding between the parties that was
16 reached during negotiations. The Respondent provided a copy of the
17 signed Tentative Agreement (Defendant's Exhibit #6) which addressed
18 the issue of Seniority. In addition, the Complainant did sign the
19 collective bargaining agreement (Defendant's Exhibit #1) in October
20 1993 after expressing his concerns over the seniority provisions
21 and verbally notified management of his intent to submit the matter
22 to mediation. Mediation was attempted on November 16, 1993.

1 The Defendant denies any violation of the above-cited law and
2 includes as evidence the signed agreement on ground rules, the
3 signed tentative agreement regarding Article 20 and the signed
4 collective bargaining agreement. The Complainant responds that the
5 Article 20 language included with the Unfair Labor Practice charge
6 reflects the understanding reached at the bargaining table when
7 these issues were discussed. The Defendant acknowledges discussing
8 these items during the negotiation sessions on May 6 and 12, 1993,
9 but never agreed to the language submitted with this complaint.

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11 This Investigator made repeated attempts over many months to
12 discuss the issues surrounding this complaint with the
13 representatives of the charging party. To date, no response has
14 been forthcoming to explain the signed Tentative Agreements or why
15 the Complainant signed the Collective Bargaining Agreement rather
16 than returning to the bargaining table.

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18 The allegations made by the Complainant and the denials set
19 forth by the Defendant do not raise sufficient factual and legal
20 issues to warrant a finding of probable merit and referral to an
21 evidentiary hearing.

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3 III. DETERMINATION
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5 Accordingly, pursuant to section 39-31-405 (2) MCA, it is
6 recommended that his complaint be dismissed.
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8 DATED this 30th day of August, 1994.
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10 BOARD OF PERSONNEL APPEALS
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14 By: 
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16 Paul Melvin
17 Investigator
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21 NOTICE

22 ARM 24.26.680B (4) provides: As provided for in 39-31-405
23 (2), MCA, if after the investigation, the agent designated by the
24 board determines that the charge is without probable merit the
25 board shall issue and cause to be served upon the complaining party
26 and the person being charged notice of its intention to dismiss the
27 complaint. This rule requires that the request for review must
28 clearly set forth the specific factual and/or legal reasons
29 indicating how the investigator's finding of no probable merit is
30 in error. The answer shall be filed within ten (10) days with the
31 Investigator at P. O. Box 1728, Helena, MT 59624.
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CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify that a true and correct copy of this document was mailed to the following on the 30th day of August, 1994:

Jack Lynch, Chief Executive
Butte-Silver Bow Government
County Courthouse
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